

STATE OF CALIFORNIA BOARD OF REGISTERED NURSING

RECOMMENDED GUIDELINES FOR DISCIPLINARY ORDERS AND CONDITIONS OF PROBATION



BRN 815 (Revised 6/97)

I	Page Number
Introduction	3
Factors to be considered	4
Violations and recommended actions	5
Other situations in which revocation is the recommended penalty	15
Drug/Alcohol rehabilitation criteria	16
Mitigation evidence	17
Terms and conditions of probation and rationale	18
Listing of probation conditions	19
Standard probation conditions	20
Optional probation conditions	24
Suspension of license	26
Recommended language for issuance and placement of a license on probation 27	
Time frames for reinstatement, modification of penalty	28
Index of violations	29
Policy statement of denial of licensure	30

Introduction



In keeping with its obligation to protect the consumer of nursing services from the unsafe, incompetent and/or negligent registered nurse, the Board of Registered Nursing has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Nursing Practice Act.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that the Administrative Law Judge clearly delineate the factual basis for his/her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons therefore and to evaluate the appropriateness of the decision.

If, at the time of hearing, the Administrative Law Judge finds that the respondent for any reason is not capable of safe practice, the Board favors outright revocation of the license. If, however, the respondent has demonstrated a capacity to practice safe nursing, a stayed revocation order with probation is recommended.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the registered nurse is suspended in order to correct deficiencies in skills, education or personal rehabilitation. (See "Actual Suspension of License" on page 26.)

FACTORS TO BE CONSIDERED

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

- 1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
- 2. Actual or potential harm to the public.
- 3. Actual or potential harm to any patient.
- 4. Prior disciplinary record.
- 5. Prior warnings on record or prior remediation.
- 6. Number and/or variety of current violations.
- 7. Mitigation evidence.
- 8. Rehabilitation evidence.
- 9. In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- 10. Overall criminal record.
- 11. Time passed since the act(s) or offense(s) occurred.
- 12. If applicable, evidence of expungment proceedings pursuant to Penal Code Section 1203.4.

VIOLATIONS AND RECOMMENDED ACTIONS

The Nursing Practice Act (Business and Professions Code, Division 2, Chapter 6) and additional sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. Following are the code numbers of the offenses and the Board-determined disciplinary action. When filing an accusation, the Office of the Attorney General may also cite additional related statutes and regulations. (The numbers following "Minimum Conditions of Probation" refer to the Standard Probation Conditions or Optional Probation Conditions listed on pages 19-26 of this document. These conditions may vary dependent upon the nature of the offense.)

An actual suspension of licensure may also be required as part of the probation order in addition to the terms and conditions listed below:

Nursing Practice Act

2761(a)(1)

a.) Incompetence or gross negligence.

- Recommended Discipline:
 - Revocation
- Minimum Discipline:
 Revocation stayed with 3 years probation.
- Minimum conditions of probation:
 1-12 and others as appropriate.

2761(a)(1)

b.) Incompetence or gross negligence.

To direct another or to personally falsify and/or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record not pertaining to controlled substances.

- Minimum discipline: *Revocation stayed with 3 years probation.*
- Minimum conditions of probation: *1-12 and others as appropriate*

2761(a)(2)

Conviction of practicing medicine without a license.

- Minimum Discipline: Revocation stayed with 3 years probation.
- Minimum conditions of probation: 1-12 and others as appropriate.

2761(a)(3) Fraudulent advertising.

• Minimum Discipline:

Revocation stayed with 3 years probation.

• Minimum conditions of probation: 1-12 and others as appropriate.

2761(a)(4) <u>Disciplinary action against health care license by another state,</u> government agency, or licensing board.

• Recommended discipline

Revocation or

Revocation stayed with 3 years probation

• Minimum conditions of probation:

1-12 and others as appropriate

(Discipline to be determined based on guidelines' recommended discipline for underlying violation(s).)

2761(a) Other actions which constitute unprofessional conduct include but are not limited to:

Failure to report client abuse.

• Recommended Discipline:

Revocation

• Minimum Discipline:

Revocation stayed with 3 years probation.

• Minimum conditions of probation:

1- 12 and others as appropriate.

Holding oneself out as any of the following without meeting the BRN standards:

nurse practitioner

nurse anesthetist

certified nurse midwife

public health nurse

nurse practitioner with a furnishing number

nurse midwife with a furnishing number

Board-listed psychiatric mental health nurse

Such action is also a violation of Sections 2761(d), 2761 (j), 2829, and 2835.

Minimum Discipline:

Revocation stayed with 3 years probation.

• Minimum conditions of probation:

1-12 and others as appropriate

2761 (b) Procuring a certificate by fraud, misrepresentation, or mistake.

Minimum Discipline: Revocation

2761 (c) Involvement in the procurement of or assisting in a criminal abortion.

- Minimum Discipline:
 - Revocation stayed with 3 years probation.
- Minimum conditions of probation: 1-12 and others as appropriate.

2761(d) <u>Violating or abetting violation of any section of the Nursing Practice Act.</u>

- Minimum Discipline:Revocation stayed with 3 years probation.
- Minimum conditions of probation:
 1- 12 and others as appropriate.

Furnishing false information.

- (1) <u>In applying for licensure</u>:
- Minimum Discipline: Denial or revocation of license.
- (2) <u>In applying for renewal of license</u>:
- Minimum Discipline:

Revocation stayed with 3 years probation. If the false information pertained to continuing education, then the license should be suspended until evidence of 30 hours of approved continuing education is provided. The suspension is followed by 3 years probation.

• Minimum conditions of probation: 1-12 and others as appropriate.

2761(f) Conviction of a felony or any offense substantially related to the qualifications, functions and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. Offenses that the Board deems to be substantially related include, but are not limited to, child abuse, murder, rape, assault and/or battery, lewd conduct, theft crimes, and sale or use of controlled substances. In addition, for reinstatement of

theft crimes, and sale or use of controlled substances. In addition, for reinstatement of licensure, the individual must have completed criminal probation and have compelling evidence of rehabilitation substantiated by a recent psychiatric evaluation. (See also 490, 492, and 493).

• Recommended Discipline: Revocation

2761(g) <u>Impersonating an applicant in an examination.</u>

• Minimum Discipline:

Revocation

2761(h) <u>Impersonating another licensed practitioner or allowing another person to use his/her license to practice nursing.</u>

Minimum Discipline:

Revocation

2761(i) Assisting in the violation of any of the provisions of Article 12 (commencing with Section 2221) of Chapter 5, Division 2 (Medical Practice Act).

- Minimum Discipline:
 - Revocation stayed with 3 years probation.
- Minimum conditions of probation: *1-12 and others appropriate*.

2761(j) Holding oneself out as a nurse practitioner without meeting the BRN standards.

- Minimum Discipline:
 - *Revocation stayed with 3 years probation.*
- Minimum conditions of probation: 1-12 and others as appropriate.

<u>Except for good cause, knowingly failing to protect patients by failing to follow infection control</u> <u>guidelines, thereby risking transmission of blood-borne infectious diseases from licensed or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse.</u>

No evidence of potential or actual patient harm

- Minimum Discipline:
 - Revocation stayed with 3 years probation
- Minimum Conditions of probation:

1-12 and others as appropriate.

Potential or actual patient harm evidenced.

Minimum Discipline:

Revocation

2762(a) <u>Illegally obtaining, possessing, or administering narcotics or dangerous drugs to self</u> or others.

- (1) In cases in which the respondent is selling drugs for personal gain or the respondent replaced, withheld or substituted drugs on the job:
 - Minimum Discipline: *Revocation*.
- (2) In cases of first time offense, with documented evidence of an onrehabilitation program:
 - Minimum Discipline: Revocation stayed with 3 years probation.
 - Minimum conditions of probation: 1-19

2762(b) <u>Use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self</u> or others, or the ability to practice nursing safely is impaired.

• Recommended Discipline:

Revocation

2762(c)

In cases of first time offense with documented evidence of an on-going rehabilitation program:

- Minimum Discipline: *Revocation stayed with 3 years probation.*
- Minimum conditions of probation: 1-19

Conviction of a criminal offense involving the prescription, consumption, or selfadministration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs. (See also 2761(f) and 2762 (a), (b) and (e).)

- (1) In cases in which the respondent was under the influence, withheld or substituted drugs on the job:
 - Minimum Discipline: *Revocation*
- (2) In cases of first time offense with documented evidence of an onrehabilitation program, except in cases where the respondent withheld or substituted drugs on the job:
 - Minimum Discipline:
 Revocation stayed with 3 years probation
 Minimum conditions of probation: 1-19

- (3) In cases where the conviction is for falsification of records pertaining to controlled substances:
 - Minimum Discipline:

Revocation stayed with 3 years probation.

• Minimum conditions of probation:

1-12 and others as appropriate

2762(d) <u>Commitment or confinement by a court of competent jurisdiction for intemperate use of, or addiction to, any narcotics, dangerous drugs or alcohol.</u>

- Minimum Discipline:
 - *Revocation stayed with 3 years probation.*
- Minimum conditions of probation: 1-19

2762(e) <u>Falsifying and/or making grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to controlled substances.</u>

- Minimum Discipline:
 - Revocation stayed with 3 years probation.
- Minimum conditions of probation:

1-12 and others as appropriate

For repeated and similar acts:

• Minimum conditions of probation: 1-18

2836.3(c) <u>Incompetence/gross negligence by a nurse practitioner in performing</u> functions related to furnishing drugs or devices.

- Recommended discipline:
 - Revocation
- Minimum discipline:

Revocation stayed with 3 years probation

Minimum conditions of probation:

1-12 and others as appropriate

Additional Business and Professions Code Statutes

119(a)	Displaying or causing or permitting to be displayed or having in possession any canceled, revoked, suspended, fictitious, or fraudulently altered license, or any document simulating a license or purporting to be or to have been issued as a license.
119(b)	Lending license to any person or knowingly permitting the use thereof by another.
119(c)	Displaying or representing any license not issued to him/her as being his/her license.
119(d)	Failing or refusing to surrender to the issuing authority upon its lawful demand any license which has been suspended, revoked, or canceled.
119(e)	Knowingly permitting any unlawful use of a license issued to him/her.
119(f)	 Photographing, photostating, duplicating, or in any way reproducing any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or displaying or having in his/her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this code. Recommended Discipline for 119(a) - (f): Revocation Minimum Discipline: Revocation stayed with 3 years probation Minimum conditions of probation 1-12 and others as appropriate

125

Any person, licensed under the provisions of Division 1, 2, or 3 of this code is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him/her, who conspires with a person not so licensed to violate any portion of this code or who, with intent to aid or assist such person in violating such provision:

(a) Allows his/her license to be used by such person.

(b) Acts as his/her agent or partner.

- Recommended Discipline:
 - Revocation
- Minimum Discipline:

Revocation stayed with 3 years probation:

• Minimum conditions of probation 1-12 and others as appropriate

125.6

Refusal to perform licensed activity; aiding or inciting refusal of performance by another licensee; discrimination or restriction in performance due to race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

- Recommended Discipline: Revocation
- Minimum Discipline:

Revocation stayed with three years probation

• Minimum conditions of probation: 1-12 and others as appropriate.

480(a)

Acts Disqualifying Applicant:

(See attached Policy Statement on Denial of Licensure.)

- (1) Conviction of a crime.
- (2) Any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or (3)

Any act which if done by a licentiate of the business or profession in question would be grounds for suspension or revocation of license.

480(c)

Applicant knowingly making a false statement of fact required to be revealed in the application for such license.

• Recommended Discipline for 480(a) and (c): Denial of licensure

492

Successful completion of a court-ordered diversion program (Penal Code) or of an alcohol and drug problem assessment program (Vehicle Code) does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.

493

The record of the conviction of a crime shall be conclusive evidence only of the fact that the conviction occurred and the board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.

496

Subversion of licensing examinations.

Recommended Discipline:

Denial of licensure, actual suspension or revocation.

498

Securing license by fraud, deceit, or misrepresentation.

Recommended discipline:

Denial of licensure, suspension, or revocation.

726 <u>Sexual abuse, misconduct, or relations with a patient</u>

• Recommended Discipline: *Revocation*

810 (a)(1) Knowingly presenting or causing to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

• Recommended Discipline:

Revocation

- Minimum Discipline: Revocation stayed with 3 years probation.
- Minimum conditions of probation: *1-12 and others as appropriate.*

810(a)(2) Knowingly preparing, making or subscribing any writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim.

- Recommended Discipline:
 - Revocation
- Minimum Discipline:
 - Revocation stayed with 3 years probation.
- Minimum conditions of probation: *1-12 and others as appropriate.*

820 <u>Unable to practice profession safely because ability to practice is impaired due to mental illness or physical illness affecting competency.</u>

• Recommended Discipline: Suspension or revocation

OTHER SITUATIONS IN WHICH REVOCATION IS THE RECOMMENDED PENALTY:

1.	Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation.				
2.	Violation of the terms and conditions of the Board's Probation Program.				
3.	Substantiated evidence or convictions of physical and/or sexual abuse.				
4.	Patient neglect by failure to provide competent nursing care.				
5.	5. Second offenses unless the respondent can demonstrate that he/she has been rehabilitated.				
	DRUG/ALCOHOL REHABILITATION CRITERIA				

Criteria to be considered in determining rehabilitation for abuse of alcohol or other drug related offenses include, but are

not limited to:

• Successful completion of drug/alcohol treatment program (a minimum of six (6) months duration). The treatment program may be a combined in-patient/out-patient and aftercare. Such a program will include at least the following elements:

Chemical-free treatment philosophy
Individual and/or group counseling
Random, documented biological fluid screening
Participation in nurse (or other professionals') support group(s)
Education about addictive disease
Adherence to a 12-step recovery program philosophy
Written documentation of participation in 12-step recovery groups

- For registered nurse licensees, employment in nursing for a minimum of six (6) months with documentation (from the
 employer) that the employer was aware of the previous drug or alcohol abuse problems. Documentation must
 substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent
 performed nursing functions in a safe and competent manner.
- For respondents seeking reinstatement of license, employment for a minimum of six (6) months with documentation from the employer that while employed, there was no evidence of alcohol or drug use.

MITIGATION EVIDENCE

The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are <u>examples</u> of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and competency:

- A) Recent, dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current nursing competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.
- B) Recent, dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.
- C) Recent, dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Groups, etc., where appropriate.
- D) Recent, dated laboratory analyses or drug screen reports, where appropriate.
- E) Recent, dated performance evaluation(s) from respondent's employer.
- F) Recent, dated physical examination or assessment report by a licensed physician.
- G) Certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation. An RN whose license has been revoked does not have an RN license and therefore cannot use his or her former license number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as an RN license is not used.

TERMS AND CONDITIONS OF PROBATION AND RATIONALE

The Board's primary responsibility is consumer protection. The Board believes that in disciplinary matters where probation has been imposed, terms and conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

The following Terms and Conditions of probation provide for consumer protection and establish a mechanism to monitor the rehabilitation progress of a probationer:

PROBATIONARY TERM

Generally, the Board recommends a minimum of three (3) years probation.

PROBATIONARY CONDITIONS

Probationary conditions are divided into two categories:

- A. Standard conditions that appear in all probation orders; and
- B. <u>Optional</u> conditions that are appropriate to the nature and circumstances of the particular violation.

(Numbers preceding "Conditions of Probation" refer to the probationary conditions and rationale on the following pages.)

LISTING OF PROBATION CONDITIONS

STANDARD PROBATION CONDITIONS

Conditions 1-12 are required as follows:

- 1) Obey all laws
- 2) Comply with probation program
- 3) Report in person
- 4) Absence from state
- 5) Submit written reports
- 6) Function as a registered nurse
- 7) Nursing practice
- 8) Supervision
- 9) Employment limitations
- 10) Complete a nursing course(s)
- 11) Cost recovery
- 12) Violation of probation

OPTIONAL PROBATION CONDITIONS

Conditions 13-18 are usually required (in addition to the standard terms 1-12) if the offense involves alcohol/drug abuse. In cases of mental illness conditions 13,17, and 18 are recommended. Any of these optional conditions may be included if relevant to the violation.

- 13) Physical examination
- 14) Participate in rehabilitation program for chemical dependence
- 15) Abstain from use of psychotropic (mood-altering) drugs
- 16) Submit to tests and samples
- 17) Mental health examination
- 18) Therapy or counseling program
- 19) Actual suspension of license

STANDARD PROBATION CONDITIONS

(To Be Included In All Probation Decisions/Orders)

(1) <u>OBEY ALL LAWS</u> - Respondent shall obey all federal, state and local laws, and all rules, and regulations of the Board of Registered Nursing governing the practice of nursing in California. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit completed fingerprint cards and

fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

RATIONALE: All licensees are responsible for "abiding by the law" as it relates to their licensure and the practice of nursing. This condition emphasizes the probationer's responsibility and it provides the Board with a vehicle to take more immediate and severe action if another violation occurs.

(2) <u>COMPLY WITH PROBATION PROGRAM</u> - Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

RATIONALE: Full compliance with terms and conditions of probation demonstrates the probationer's commitment to rehabilitation and to correcting the problems which led to the disciplinary action.

(3) <u>**REPORT IN PERSON**</u> - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

RATIONALE: This provides a means for the Board representatives to make periodic personal assessments of the probationer, to give guidance and direction and to require the probationer to appear before the Board, if necessary.

(4) <u>ABSENCE FROM STATE</u> - Periods of residency or practice outside of California will not apply to the reduction of this probationary term. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state.

RATIONALE: This ensures probationers may not complete probation without being fully monitored for their term in California.

(5) <u>SUBMIT WRITTEN REPORTS</u> - Respondent, during the period of probation, shall submit such written reports/declarations and verification of actions under penalty of perjury as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

RATIONALE: This provides the Board with a mechanism for maintaining communication with the probationer between meetings; gathering pertinent information from the probationer; and obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis.

(6) **FUNCTION AS A REGISTERED NURSE** - Respondent, during the period of probation, shall engage in the practice of professional nursing in California for a minimum of 24 hours per week (or as determined by the Board) for 6 consecutive months. Per Section 2732 of the Business and Professions Code, no person shall engage in the practice of registered nursing without holding a license which is in an active status.

RATIONALE: This provides the Board with an opportunity to monitor the probationer and determine if he/she can perform the functions and duties of a registered nurse in a competent manner. It also prevents the probationer from merely "sitting out" the probation and avoiding the necessity of complying with nursing practice related probation terms.

(7) <u>NURSING PRACTICE</u> - The Board shall be informed of and approve of each agency for which the respondent provides nursing services prior to respondent's commencement of work. The respondent shall inform his/her

employer of the reason for and the terms and conditions of probation and shall provide a copy of the Board's decision and order to his/her employer and immediate supervisor. The employer shall submit performance evaluations and other reports as requested by the Board. Respondent is also required to notify the Board in writing within seventy-two (72) hours after termination of any nursing employment. Any notification of termination shall contain a full explanation of the circumstances surrounding it.

RATIONALE: This condition allows the Board to determine the appropriateness of an agency for which the probationer will be providing nursing services and to obtain reports relative to the probationer's nursing competency. The condition also provides the Board with a mechanism for ensuring that the employing agency is informed of the license status of the probationer so that, if necessary, the work environment can be structured to ensure consumer safety.

(8) <u>SUPERVISION</u> - The Board shall be informed of and approve of the level of supervision provided to the respondent while he/she is functioning as a registered nurse. The appropriate level of supervision must be approved by the Board prior to commencement of work. Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing.

RATIONALE: This allows the Board to require appropriate supervision, to monitor the probationer's nursing competency and thus protect consumer safety. The level of supervision will be determined by the Board at probation meetings.

Levels of supervision are described as:

- (a) Maximum a registered nurse supervisor is present on the patient care area at all times.
- (b) Moderate the registered nurse supervisor must be on the patient care unit at least half the hours the probationer works.
- (c) Minimum The registered nurse supervisor must see the probationer at least twice during each shift worked.
- (9) <u>EMPLOYMENT LIMITATIONS</u> Respondent may not work for a nurse registry; temporary nurse agency; home care agency; in-house nursing pool; as a nursing supervisor; as a faculty member in an approved school of nursing; or as an instructor in a Board approved continuing education program. Respondent must work only on regularly assigned, identified and predetermined worksite(s) with appropriate supervision as approved by the Board.

RATIONALE: This condition prevents the probationer from engaging in the practice of nursing in situations where there is no close supervision and/or where the probationer could have undue authority over others and access to controlled substances. If the probationer is working through a registry, there is no assurance that the contracting facility is aware of the nurse's probation.

(The restriction on C.E. Courses is consistent with existing regulations (Section 1457, Title 16, California Code of Regulations)).

(10) <u>COMPLETE A NURSING COURSE(S)</u> - Respondent at his/her expense, shall begin and successfully complete a course(s) in nursing as directed by the Board prior to engaging in the practice of nursing and prior to the end of the probationary term.

The respondent may be suspended from practicing nursing until the necessary coursework is completed. The content of such course(s) and the place and conditions of instruction shall be specified by Board representatives at the time of the initial probation meeting based on the nature of the violation(s). Specific courses must be approved prior to enrollment. The respondent must submit written proof of enrollment and proof of successful completion. Transcripts or certificates of completion must be mailed directly to the Board by the agency or entity instructing the respondent.

Home study or correspondence courses are not acceptable and will not be approved.

RATIONALE: This condition permits the Board to require the probationer to remediate deficiencies in knowledge which affected or may affect his/her practice of nursing. This is necessary in gross negligence or incompetence as well as alcohol/drug abuse cases. An actual suspension of a license may be required as determined by the Board, until the required course work is completed.

(11) <u>COST RECOVERY</u> - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

NOTE: When the decision in a matter is revocation, cost recovery should be included as follows: "Upon reinstatement of the license, respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$______. Respondent shall be permitted to pay these costs in a payment plan approved by the Board".

(12) <u>VIOLATION OF PROBATION</u> - If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the respondent's license will be fully restored.

OPTIONAL PROBATION CONDITIONS

(13) **PHYSICAL EXAMINATION** - Respondent, at his/her expense, within 45 days of the effective date of this decision, shall have a licensed physician submit, in a format acceptable to the Board, an assessment of the respondent's physical condition and capability to perform the duties of a professional registered nurse. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician providing written reports to the Board on forms provided by the Board.

RATIONALE: This condition permits the Board to require the probationer to obtain appropriate treatment for physical problems/disabilities which could affect nursing practice. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse.

(14) PARTICIPATE IN REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE Respondent, at his/her expense, shall successfully complete or shall have successfully completed a treatment/rehabilitation program of at least six months duration which the Board approves. Reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a treatment program prior to commencement of probation, the respondent, within a reasonable period of time as determined by the Board (but not exceeding 45 days from the effective

respondent, within a reasonable period of time as determined by the Board (but not exceeding 45 days from the effective date of the decision) shall be enrolled in a treatment program. If a treatment program is not successfully completed within the first nine months of probation, the Board will consider the respondent to be in violation of probation and will initiate further disciplinary action against the respondent's license.

In addition, respondent must attend two 12-step recovery meetings per week (e.g., Narcotics Anonymous, Alcoholic Anonymous, etc.) and a nurse support group as directed by the Board. If a nurse support group is not available, an additional 12-step meeting must be added. Respondent must submit dated and signed documentation confirming such attendance to the Board during the entire period of probation.

RATIONALE: This condition permits the Board to require the probationer to obtain appropriate treatment, within a specified time period, for problems which could affect her/his nursing practice and provides for continued involvement in a support system. The Board supports the philosophy of a 12-step recovery program for successful recovery from chemical dependency or substance abuse.

(15) <u>ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS</u> - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are lawfully prescribed by a licensed physician or dentist as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing physician or dentist, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, and the date the medication will no longer be required.

RATIONALE: Abstinence from mood altering substances (alcohol/drugs) is necessary for compliance with the Board's Probation Program and to ensure successful rehabilitation. Abstinence from any psychotropic drug is required to prevent the substitution of one addicting substance with another.

(16) **SUBMIT TO TESTS AND SAMPLES** - Respondent, at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times and for ensuring that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent will be considered in violation of probation.

In addition, respondent, at any time during the period of probation shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

RATIONALE: This condition provides documentation that the probationer is substance or chemical free. It also provides the Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol and/or dangerous drugs when the probationer appears to be in violation of the terms of probation or appears to be under the influence of mood altering substances.

(17) MENTAL HEALTH EXAMINATION - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

RATIONALE: This condition permits the Board to require the probationer to obtain appropriate treatment and counseling for mental health problems which could affect nursing practice and/or could lead to relapse of a chemical dependency problem.

(18) <u>THERAPY OR COUNSELING PROGRAM</u> - Respondent, at his/her expense, shall participate in an ongoing counseling program until such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

RATIONALE: This condition permits the Board to require the probationer to obtain appropriate treatment and counseling for mental health or chemical dependency problems which could affect her/his nursing practice.

(19) <u>ACTUAL SUSPENSION OF LICENSE</u> - As part of probation, respondent is suspended from the practice of nursing for ____ months (period of time not to exceed one year) beginning the effective date of this decision. The respondent will be responsible for informing his/her employer of the Board's decision, the reasons for and the length of suspension. Prior to the lifting of the actual suspension of license, the respondent will provide documentation of completion of educational courses or treatment rehabilitation.

RATIONALE: Business and Professions Code Section 2759 (c) gives the Board of Registered Nursing authority to: "Suspend licensee's right to practice nursing for a period not exceeding one year" as a mode of discipline for registered nurses found guilty of violating the Nursing Practice Act.

It is the intent of the Board of Registered Nursing to assure safe nursing practice and rehabilitate rather than to punish. As part of probation, the public may be better protected if the registered nurse is suspended from the practice of nursing in order to correct deficiencies in skills, education or personal rehabilitation and to assure documented proof of rehabilitation.

The registered nurse is suspended from working in the practice of nursing for a period of time not exceeding one (1) year until he/she can provide documented evidence of successful completion of: a) requisite educational courses (as part of Condition 10); and/or b) a residential treatment/rehabilitation program (as part of Condition 14). The length of suspension will be determined by the Board based on the violation.

RECOMMENDED LANGUAGE FOR ISSUANCE AND PLACEMENT OF A LICENSE ON PROBATION FOR INITIAL LICENSURE AND REINSTATEMENT OF LICENSE

In order to provide clarity and consistency in its decisions, the Board of Registered Nursing recommends the following language in proposed decisions or stipulated agreements for exam applicants, endorsement applicants [those who hold a license in another state(s)], and for petitioners for reinstatement who are issued a license that is placed on probation.

license in another state(s)], and for petitioners for reinstatement who are issued a license that is placed on probation.
Suggested language for exam applicants who are placed on probation:
"The application of respondent for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of years on the following terms and conditions:"
Suggested language for endorsement applicants who are placed on probation:
"The application of respondent licensure is hereby granted and a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of years on the following terms and conditions:"
Suggested language for reinstatement of licensure with conditions of probation:
"The application of respondent for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of years on the following terms and conditions:"
It is important to note that in many cases, petitioners for reinstatement have not practiced nursing in the State of California for eight years. They must retake the licensing exam before they are eligible for licensure per Section 2811 of the Business and Professions Code. This information must be provided to the Administrative Law Judge so that he/she can include: "Upon successful completion of the licensure examination, a license shall be issued to respondent."
In addition to the examination requirement, it may be appropriate to require completion of comprehensive education

In addition to the examination requirement, it may be appropriate to require completion of comprehensive education courses prior to resuming practice. Recommended language: "The respondent shall enroll in and successfully complete a refresher course or equivalent set of courses as approved by representatives of the Board. The respondent is suspended from practice until the required course work is successfully completed, but may use his/her license for the limited purpose of completing clinical requirements of the required coursework."

TIME FRAMES FOR PETITIONS FOR REINSTATEMENT AND MODIFICATION OF PENALTY

Pursuant to Business and Professions Code, Section 2760.1(a), time frames for petitions for reinstatement and modification of penalty are as follows:

- At least three years for reinstatement of a license revoked for unprofessional conduct. (The sole discretion, specify in its order a lesser period, but not less than one year.)
- At least two years for early termination of a probation period of three years or more.
- At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

INDEX OF VIOLATIONS

B & P Code Section	
2761 (a)(1) Incompetence or gross negligence	5
2761 (a)(2) Conviction of practicing medicine without a license	6
2761 (a)(3) Fraudulent advertising	7
2761 (a)(4) Disciplinary action by another state, government agency, or licensing board 7	
2761 (a) Unprofessional conduct, including but not limited to failure to report client abuse and holding out as a certified practitioner.	
2761 (b) Procuring a certificate by fraud, misrepresentation or mistake	8
2761 (c) Involvement in procurement of or assisting in criminal abortion	8
2761 (d) Nursing Practice Act	8
2761 (e) False information on application for licensure.	8
2761 (f) Conviction of substantially related felony or offense.	8
2761 (g) Impersonating an applicant in an exam 9	
2761 (h) Impersonating another RN 9	
2761 (i) Violating Assisting in the violation of the Medical Practice Act	9
2761 (j) Holding out as a nurse practitioner, nurse anesthetist, nurse midwife or public health nurse when not certified.	9
2761 (k) Knowingly fail to follow infection control guidelines	9
2762 (a) Illegally obtain, possess or administer controlled substances or dangerous drugs	10
2762 (b) Abuse of drugs or alcohol 10	
2762 (c) Criminal conviction related to drugs or alcohol	10
2762 (d) Commitment/Confinement by court for abuse of drugs or alcohol	11
2762 (e) Falsify records pertaining to controlled substances or dangerous drugs	11
2836.3(c) Incompetence/gross negligence by nurse practitioner in performing functions related to furnishing drugs or devices.	11
119 (a) Display or possess invalid or fraudulent license.	12
119 (b) Lend license to another	12

119 (c)	Display license not issued to self	12
119 (d)	Failure to surrender license 12	
119 (e)	Knowingly permit unlawful use of license	12
119 (f)	Unlawfully duplicate license 12	
125	Conspire with an unlicensed person to use license unlawfully	13
125.6	Refusal to perform licensed activity	13
480 (a)	Acts disqualifying applicant 13	
480 (c)	False statement on application	14
492	Disciplinary action or denial notwithstanding diversion program	14
493	Record of convictions related to qualifications, functions and duties of licensee.	14
496	Conduct which violates security of exam materials	14
498	Secure a license by fraud, deceit, or misrepresentation	14
726	Sexual abuse, misconduct, or relations with a patient	14
810 (a)(1)	Present false insurance claims 14	
810 (a)(2)	Prepare false insurance claims	15
820	Inability to practice due to mental/physical illness	15